

**CONSULTING SERVICES AND ANALYTIC SOLUTIONS FOR IMPLEMENTATION OF 340B
PROGRAM
PRISM HEALTH GROUP, LLC
COR-SVCS-2023-0497-HSB**

THIS CONTRACT is entered into by and between the State of Montana, **Montana Department of Corrections**, (State), whose address and phone number are P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301, (406) 444-3930, and **Prism Health Group, LLC**, (Contractor), whose address and phone number are 3300 North Ashton Blvd., Suite 100, Lehi, Utah 54650, (320) 237-2822.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The Contract's initial term is, December 1, 2022, through November 30, 2023, unless terminated earlier as provided in this Contract. In no event is this Contract binding on State unless State's authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.

2. SERVICES

2.1 Purpose. Contractor will provide State the following pharmacy specific consulting services and analytics solutions for implementation of the 340B program which lowers the cost of care, improves care delivery, and enhances the quality of the State's pharmacy program. Contractor will provide expertise and support necessary to capitalize on every dollar possible, successfully navigate the critical compliance requirements, and ensure vendors are held accountable.

2.2 Goals and Objectives. Contractor services will capture the State's goals and objectives that are as follows:

2.2.1 . To provide a qualified pharmacy consulting partner that will perform ongoing, end-to-end pharmacy program financial, operational, and strategic performance on State's behalf.

2.2.2 . To provide a consulting partner that will aggressively negotiate competitive pharmacy contracts, perform ongoing program performance monitoring, facilitate annual financial reconciliation audit of financial guarantees and administrative fee/rate commitments.

2.2.3 . To provide a qualified consulting partner that will aid in maximizing the State's 340B program effectiveness within the incarcerated population. Aid the State in identifying opportunities for enhancement of the existing 340B program, which includes mock-audit, contract pharmacy negotiations, 340B administrator accountability, and revenue maximization.

2.2.4 . To provide a consultant partner that will provide ongoing pharmacy consulting services to the State which includes a designated account support team, regular program status conference calls, ongoing participation on strategic discussions between State, pharmacy providers, State procurement officials, HRSA, etc.

2.2.5 . To provide a qualified pharmacy consultant who will aid in drafting 340B policies and procedures as well as aid in maintaining compliance with OPA database.

2.2.6 . To provide a qualified contract pharmacy consultant partner who will lead and facilitate contracting process and negotiations with contract pharmacy partners as well as delegated 340B PBM/TPA providers.

2.2.7 . To provide a qualified contract pharmacy consultant partner who will provide detailed analysis and key recommendations of 340B program on an ongoing basis to optimize performance and conduct performance reviews at a frequency of clients choosing.

2.2.8 . To provide expertise and support necessary to capitalize on every dollar possible, successfully navigate the critical compliance requirements, and ensure vendors are held accountable.

2.2.9 . To provide the State with an outlined statement of work including project specific activities, deliverables and timelines on meeting all the above listed goals and objectives with fifteen (15) business days of contract signing. Statement of Work will be presented to and approved by the Department of Corrections Leadership.

2.2.10 . To perform services within this contract, see Business Associate Agreement (BAA), referenced as Attachment A.

3. WARRANTIES

3.1 Warranty of Services. Contractor represents and warrants that the services will be performed in a professional and workmanlike manner with a degree of care, skill, and competence that is consistent with generally accepted industry standards reasonably expected of similar types of engagements. Contractor warrants that the manner in which it provides the services conform to the Contract requirements, including all descriptions, specifications, and attachments made a part of this Contract. State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, State may require Contractor to promptly correct, at Contractor's expense, any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished.

3.2 Performance Guarantee. All guarantees are based on achievement of financial value through patient engagement, contract enhancement, and/or achieved savings based on the impact of Contractor's suite of services that are deployed to State. In the event State does not capture the 1:1 Return on Investment equal to the fees paid, Contractor will refund consulting fees paid, on a dollar-for-dollar basis, up and to the shortfall in performance in the first year of the Contract.

4. CONSIDERATION/PAYMENT

4.1 Payment Schedule. In consideration of the consulting services to be provided, State shall pay Contractor according to the following schedule:

State will pay Contractor six thousand two hundred fifty and 00/100 Dollars (\$6,250.00) a month for twelve (12) months.

4.2 Withholding of Payment. Subject to provisions of Section 15, Event of Breach – Remedies, State may withhold payments to Contractor if Contractor has breached this Contract. Such withholding may not be greater than, in the aggregate, 5% of the total value of the subject statement of work or applicable contract.

4.3 Payment Terms. Unless otherwise noted in the solicitation document, State has thirty (30) days from receipt to pay invoices, as allowed by § 17-8-242, MCA. Contractor shall provide banking information at the time of Contract execution in order to facilitate State's electronic funds transfer payments.

4.4 Reference to Contract. The Contract number **MUST** appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, State is not obligated to timely pay the invoice.

5. NON-EXCLUSIVE CONTRACT

The intent of this Contract is to provide state agencies with an expedited means of procuring supplies and/or services. This Contract is for the convenience of state agencies and is considered by State to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the Contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. State does not guarantee any usage.

6. ACCESS AND RETENTION OF RECORDS

6.1 Access to Records. Contractor shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. State may terminate this Contract under Section 14, Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this section. (§ 18-1-118, MCA.) Offender's protected health information (PHI) shall not be made accessible to Legislative Auditor Division without a HIPAA-compliant release and if applicable a 42 CFR Part-2 compliant release signed by the offender.

6.2 Retention Period. Contractor shall create and retain all records supporting the consulting services for a period of eight (8) years after either the completion date of this Contract or termination of the Contract.

7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this Contract without State's prior written consent. (§ 18-4-141, MCA) Contractor is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and State under this Contract.

8. DEFENSE, INDEMNIFICATION / HOLD HARMLESS

Contractor shall protect, defend, indemnify, and save harmless the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, liabilities, demands, causes of action, judgments, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by Contractor's employees and agents, its subcontractors, its subcontractor's employees and agents, or third parties on account of property damage, personal injury, bodily

injury, death, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract.

Contractor waives all claims, demands, causes of action, and recourse against the State, including claims of contribution or indemnity, arising in favor of Contractor on account of property damage, personal injury, bodily injury, death, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract.

9. REQUIRED INSURANCE

9.1 General Requirements. Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

9.2 Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

9.3 Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of **\$1,000,000** per occurrence and **\$2,000,000** aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

9.4 Specific Requirements for Automobile Liability. Contractor shall purchase and maintain coverage with split limits of **\$500,000** per person (personal injury), **\$1,000,000** per accident occurrence (personal injury), and **\$100,000** per accident occurrence (property damage), OR combined single limits of **\$1,000,000** per occurrence, to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

9.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

9.6 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by Department of Corrections, P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301. *The certificates must name the State of Montana as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies.* Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.

9.7 Specific Requirements for Cyber/Data Information Security Insurance. The Contractor shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of \$2,000,000 per occurrence to cover the unauthorized acquisition of personal information such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with § 2-6-1501, MCA through § 2-6-1503, MCA. If the Contractor maintains higher limits than the minimums shown above, the State requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third party liability settlements or judgements as may be caused by any act, omission, or negligence of the Contractor's officers, agents, representatives, assigns or subcontractors. Note: If occurrence coverage is unavailable or cost-prohibitive, the State will accept 'claims made' coverage provided the following conditions are met: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work; 2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

10. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with §§ 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to Department of Corrections, P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301.

11. COMPLIANCE WITH LAWS

11.1 Applicable Laws. Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act 42 U.S.C. § 18001 et seq. Contractor will comply with the Prison Rape Elimination Act 34 U.S.C. § 30301 et seq., the Prison Rape Elimination Act final rule 28 CFR Part 115, and MDOC Policy 1.1.17, Prison Rape Elimination Act to include

incident reporting. State has a zero-tolerance policy as to incidents of sexual assault/rape or sexual misconduct in its correctional facilities or premises. Contractor is referred to § 45-5-501 MCA. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with § 49-3-207, MCA, and State of Montana Executive Order No. 04-2016, Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

11.2 Affordable Care Act. The Affordable Care Act requires a Contractor, if Contractor is an applicable large employer under the ACA, to provide healthcare coverage for its employees who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980H (ACA).

12. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with §§ 35-14-1505, 35-8-1001, and 35-12-1309 MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. §§ 35-8-1001, 35-12-1302, and 35-14-1502, MCA. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sosmt.gov>.

13. INTELLECTUAL PROPERTY/OWNERSHIP

13.1 Mutual Use. Contractor shall make available to State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice or created in whole or in part under this Contract, if such availability is necessary for State to receive the benefits of this Contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use copyrightable property created under this Contract. This mutual right includes (i) all deliverables and other materials, products, or modifications that Contractor has developed or prepared for State under this Contract; (ii) any program code, or site-related program code that Contractor has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this Contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".

13.2 Title and Ownership Rights. State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by State (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

13.3 Ownership of Work Product. Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as State may reasonably request, to perfect State's ownership of any Work Product.

13.4 Copy of Work Product. Contractor shall, at no cost to State, deliver to State, upon State's request during the term of this Contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of State's request, or such expiration or termination.

13.5 Ownership of Contractor Pre-Existing Materials. Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Contractor in connection with the services provided to State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-existing Materials to State before its use and to prove its ownership. If, however, Contractor fails to disclose to State such Contractor Pre-existing Materials, Contractor shall grant State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-existing Materials embedded in the Work Product to the extent such Contractor Pre-existing Materials are necessary for State to receive the intended benefit under this Contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section 13.3, Ownership of Work Product, or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this Contract.

14. CONTRACT TERMINATION

14.1 State Termination for Cause with Notice to Cure Requirement. State may terminate this Contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this Contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

14.2 State Termination for Convenience. State may, by written notice to Contractor, terminate this Contract without cause and without incurring liability to Contractor. State shall give notice of termination to Contractor at least 30 days before the effective date of termination. State shall pay Contractor only that amount, or prorated portion thereof, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

14.3 Contractor Termination for Cause with Notice to Cure Requirement. Contractor may terminate this Contract for State's failure to perform any of its duties under this Contract after giving State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

14.4 Reduction of Funding. State must, by law, terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent

fiscal period. (§ 18-4-313(4), MCA). If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

14.5 Right of Assurance. If State, in good faith, has reason to believe that Contractor does not intend to, is unable to, or has refused to perform or continue performing all material obligations under this Contract, State may demand in writing that Contractor give a written assurance of intent to perform. Contractor's failure to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at State's option, be the basis for terminating this Contract and pursuing the rights and remedies available under this Contract or law.

15. EVENT OF BREACH – REMEDIES

15.1 Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

- Products or services furnished fail to conform to any requirement;
- Failure to submit any report required by this Contract;
- Failure to perform any of the other terms and conditions of this Contract;
- Beginning work under this Contract without prior State approval or breaching Section 21.1, Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

15.2 Event of Breach by State. State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

15.3 Actions in Event of Breach. Upon Contractor's material breach, State may:

- Terminate this Contract under Section 14.1, State Termination for Cause with Notice to Cure Requirement and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

Upon State's material breach, Contractor may:

- Terminate this Contract under Section 14.3, Contractor Termination for Cause with Notice to Cure Requirement, and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

16. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

17. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

18. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State's prior written consent. Product or services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

19. LIAISONS AND SERVICE OF NOTICES

19.1 Contract Liaisons. All project management and coordination on State's behalf must be through a single point of contact designated as State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this Contract must be coordinated between State's liaison and Contractor's liaison.

Cindy McGillis-Hiner is State's liaison
5 S. Last Chance Gulch
Helena, MT 59620-1301
(406) 444-5439
Chiner@mt.gov

Ryan Rice is Contractor's liaison
701 Sand Lake Road
Onalaska, WI 54650
(320) 237-2822
rrice@prismhealthstrategists.com

19.2 Contract Manager. State's Contract Manager identified below is State's single point of contact and shall perform all contract management, on State's behalf. Written notices, requests, complaints, or any other issues regarding this Contract should be directed to State's Contract Manager.

Kristi L. Hernandez is State's Contract Manager
5 S. Last Chance Gulch
Helena, MT 59620-1301
(406) 444-9649
Kristi.hernandez@mt.gov

19.3 Notifications. State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, email, mail, or facsimile. If notice is provided by personal service, email, or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective on the third business day after mailing.

20. MEETINGS

20.1 Technical or Contractual Problems. Contractor shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and State in the performance of their respective obligations, at no additional cost to the State. State may request the meetings as problems arise and will be coordinated by State. State shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

20.2 Progress Meetings. During the term of this Contract, State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and State's progress in the performance of their respective obligations. These progress meetings will include State's Project Manager, Contractor's Project Manager, and any other additional personnel involved in the performance of this Contract as required. At each meeting, Contractor shall provide State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of State to perform its obligation under this Contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

20.3 Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

20.4 State's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of State's failure or delay in discharging any State obligation, State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby and provide for any additional charges by Contractor. This is Contractor's sole remedy. If State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

21. TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition

assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. State shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If State terminates a project or this Contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

22. CHOICE OF LAW AND VENUE

Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees, except as provided in Section 8, Defense, Indemnification/Hold Harmless.

23. TAX EXEMPTION

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act 42 U.S.C. § 18001 et seq.

24. PERSONAL PROPERTY TAX

All personal property taxes will be paid by Contractor.

25. AUTHORITY

This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

26. SEVERABILITY

A declaration by any court or any other binding legal source that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

27. PARAGRAPH HEADINGS

The captions and headings set forth in this Contract are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

28. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

28.1 Contract. This Contract consists of twelve (12) numbered pages, any Attachments as required, the limited solicitation completed, as amended, and Contractor's response, as amended. In the case of dispute or

ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

28.2 Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

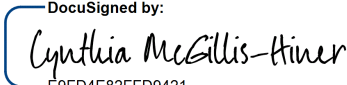
29. WAIVER

State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

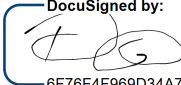
30. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

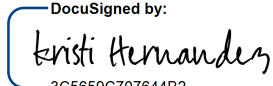
STATE OF MONTANA
Montana Department of Corrections
5 S. Last Chance Gulch
Helena, MT 59620-1301

DocuSigned by:

 E9ED4E82EED9421 12/14/2022
 Cynthia McGillis-Hiner, Bureau Chief (Date)
 Health Services Bureau

PRISM HEALTH GROUP, LLC
3300 North Ashton Blvd.
Lehi, UT 84043
Onalaska, WI 54650

DocuSigned by:

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 Ryan T. Rice (Date)
 Principal & Practice Lead

Approved as to Form:

DocuSigned by:

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 Kristi L. Hernandez, Contracts Officer (Date)
 Financial Services Bureau

Approved as to Legal Content:

DocuSigned by:

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 Molenda McCarty, Legal Counsel (Date)
 Legal Services Bureau

Attachment A To Contract No. COR-SVCS-2023-0497-HSB

Rev. 12/2022

BUSINESS ASSOCIATE AGREEMENT

PARTIES

This Business Associate Agreement (Agreement) is entered into between the Department of Corrections, (the "State"), whose contact information is as follows: P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT, 59620-1301, Phone Number (406) 444-3930, and Prism health Group, LLC (Business Associate), whose contact information is as follows: Federal Tax ID Number 88-2321599, 3300 North Ashton Blvd., Suite 100, Lehi, UT, 54650, Phone Number (320) 237-2822.

THE PARTIES AGREE AS FOLLOWS:

1. Business Associate Status

- a. The State is subject to and must comply with provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as codified at 42 U.S.C. § 1320d-d8, and the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), enacted as part of the American Recovery and Reinvestment Act of 2009, as codified at 42 U.S.C. §§ 300jj et seq. and §§ 17901, et seq. and the implementing regulations for the two acts at 45 CFR Parts 160, 162 and 164.
- b. The State has determined it is a hybrid entity as defined in the implementing regulations, that is a covered entity performing both covered and non-covered functions. Under the HIPAA and HITECH and the implementing regulations, the Business Associate, as an entity that performs or assists in the performance of an administrative or data function for the State involving the use or disclosure of protected health information (PHI) for the State, is acting as a business associate of a covered entity.

2. Definitions that Apply to This Agreement

Terms used in this Agreement have the same meaning as those terms in the HIPAA and HITECH Acts and the implementing regulations.

3. Status as a Business Associate

The Business Associate agrees that it is a Business Associate of the State, as defined at 45 CFR § 160.103, and further agrees that it is obligated to comply with the terms of this Agreement and with the requirements of the HIPAA and HITECH Acts and the implementing regulations.

4. Obligations of Business Associate

The Business Associate, as a business associate of the State, must:

- a. Use or disclose PHI, including E-PHI, only as is permitted or required by this Agreement, in compliance with the State's minimum necessary standard policies and procedures, or by applicable law inclusive of 45 CFR Parts 160, 162 and 164;
- b. Use appropriate safeguards to prevent use or disclosure of PHI and E-PHI other than as provided for by this Agreement or by law;

- c. Implement appropriate administrative, physical and technical security safeguards as set forth in § 164.306, § 164.308, and § 164.312, that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and prevent use or disclosure of the PHI other than as provided for by this Agreement;
- d. Mitigate to the extent practicable and as may be directed by the State any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate that is in violation of the requirements of this Agreement;
- e. Report in a timely manner as required by law and this Agreement to the State any use or disclosure of the PHI not provided for by this Agreement inclusive of uses and disclosures of information that are not in compliance with the minimum necessary standard;
- f. Report to the State any security incident of which it becomes aware, and at the request of the State must identify: i) the date of the security incident, ii) the scope of the security incident, iii) the Business Associate's response to the security incident, and iv) the identification of the party responsible for causing the security incident, if known;
- g. Enter, as required by 45 CFR § 164.504, into Business Associate Agreements containing the terms and conditions as required by the HIPAA and HITECH Acts and the implementing regulations and as are stated in this Agreement, with any subcontractors performing services in relation to the services being provided by the Business Associate for the State that involve PHI;
- h. Make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of the State, available to the State, or to the Secretary of the Federal Department of Health and Human Services in accordance with 45 CFR § 164.408, in a time and manner prescribed by the State or designated by the Secretary, for purposes of the Secretary determining the State's and the Business Associate's compliance with the Privacy Regulation, the Security Regulation, and the HITECH Act;
- i. Document disclosures of PHI and collect information related to those disclosures necessary for the State to respond to a request by a person for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528 and Section 13405(c) of the HITECH Act;
- j. Provide to the State or a person, in time and manner prescribed by the State, documentation necessary for the State to respond to a request by a person for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Notwithstanding 45 CFR § 164.528(a)(1)(i), the Business Associate must document disclosures of PHI made through an electronic health record to carry out treatment, payment or health care operations as provided by 45 CFR § 164.506 in the six years prior to the date on which the accounting is requested, and to collect information related to such disclosures as required by the Secretary in regulation pursuant to Section 13405(c)(2) of the HITECH Act;
- k. Implement a response program, in compliance with Section 13402 of the HITECH Act and implementing regulations, and Subpart D of 45 CFR Part 164 that specifies the actions to be taken when the Business Associate detects or becomes aware of unauthorized access to information systems. The response program must include the following features:
 - (i) The Business Associate must notify the State, by facsimile or telephone, of any breach or suspected breach of its security related to areas, locations, or computer system which contain unsecured PHI, including, without limitation, any instance of theft, unauthorized access by fraud, deception, or other malfeasance or inadvertent access (an "incident") in accordance to 45 CFR § 164.410, as promptly as possible, upon having reason to suspect that an incident may have occurred or determining the scope of any such incident, but in no event later than two (2) calendar days upon having reason to suspect that an incident may have occurred;

- (ii) In the event of any incident, the Business Associate must provide to the State, in writing, those details concerning the incident as the State may request, and must cooperate with the State, its regulators and law enforcement to assist in regaining possession of the unsecured PHI and in preventing its further unauthorized use, and take any necessary remedial actions as may be required by the State to prevent other or further incidents;
- (iii) If the State determines that it may need to notify any person(s) as a result of such incident that is attributable to the Business Associate's breach of its obligations under this Agreement, the Business Associate must bear all reasonable direct and indirect costs associated with the determination, including, without limitation, the costs associated with providing notification to the affected person, providing fraud monitoring or other services to affected persons and any forensic analysis required to determine the scope of the incident;
- (iv) The Business Associate, working in cooperation with the Department, must update the notice provided to the State under this Agreement of the incident to include, to the extent possible and as soon as possible, the identification of each person whose unsecured PHI has been, or is reasonably believed by the Business Associate or the State to have been accessed, acquired, used or disclosed during the incident and must provide any of the following information the State is required to include in its notice to the person pursuant to 45 CFR § 164.404(c):
 - (A) A brief description of what happened, including the date of the incident and the date of the discovery of the incident, if known;
 - (B) A description of the types of unsecured PHI that were involved in the incident (e.g., Social Security Number, full name, date of birth, address, diagnosis);
 - (C) Any steps the person should take to protect themselves from potential harm resulting from the incident;
 - (D) A brief description of what is being done to investigate the incident, mitigate the harm, and protect against future incidents;
 - (E) Contact procedures for persons to ask questions or learn additional information which shall include a toll-free number, an e-mail address, website, or postal address; and
 - (F) This additional information must be submitted to the State immediately at the time the information becomes available to the Business Associate.
- (v) limit its use and disclosure of PHI created or received by the Business Associate from or on behalf of the State to uses or disclosures as are permitted to the Business Associate under the applicable requirements of 45 CFR § 164.504(e) and the HITECH Act and the terms of this Agreement. The Business Associate must also comply with the additional requirements of Subtitle D of the HITECH Act that relate to privacy and that apply to covered entities and to the Business Associate as a business associate; and
- (vi) respond to a person's request under 45 CFR § 164.522(a)(1)(i)(A) that the Business Associate restrict the disclosure of the person's PHI.

5. Permitted Uses, Disclosures and Limitations

- a. Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI on behalf of, or to provide services to, the State for the following purposes, if such use or disclosure of PHI would not violate the requirements of the HIPAA and HITECH Acts and the implementing regulations if done by the State or otherwise violate the minimum necessary policies and procedures of the State: to perform services within this Contract.

- b. The Business Associate may use PHI to report violations of federal and state laws to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1) and (2).
- c. The Business Associate, as required by 45 CFR § 164.504(e)(1)(iii), must terminate any business associate agreement with a subcontractor that violates the requirements of this Agreement or the applicable law.
- d. The Business Associate shall not directly or indirectly receive remuneration in exchange for PHI that is created or received by the Business Associate from or on behalf of the State.

6. Use and Disclosure for Business Associate's Purposes

- a. The Business Associate must use and disclose PHI that is created or received by the Business Associate from or on behalf of the Department in compliance with each applicable requirement of 45 CFR § 164.504(e) and the HITECH Act.
- b. The Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate provided that:
 - (i) the disclosures are required by law;
 - (ii) the disclosures are expressly authorized in this Agreement by the State;
 - (iii) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only for the purpose for which it was disclosed to the person; and
 - (iv) the Business Associate requires the person to whom the information is disclosed to immediately report any incident of which it is aware in which the confidentiality of the information has been breached.
- c. The Business Associate may only use PHI for Data Aggregation purposes if the State in this Agreement expressly authorizes those purposes and the Data Aggregation is permitted in accordance with 42 CFR § 164.504(e)(2)(i)(B).
- d. To the extent otherwise permitted by this Agreement, a communication that is described in the definition of Marketing in 45 CFR § 164.501 for which the State receives or has received Direct or Indirect Payment (excluding payment for Treatment) in exchange for making such communication, shall not be considered a Health Care Operation unless:
 - (i) such communication describes only a drug or biologic that is currently prescribed for the recipient of the communication and any payment received in exchange for making such a communication is reasonable in amount; or
 - (ii) the communication is made by the Business Associate on behalf of the State and the communication is otherwise consistent with this Agreement. No communication may be made by the Business Associate without prior written authorization by the State.

7. Obligations of the Department

- a. The State must notify the Business Associate of any limitation(s) in the State's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of PHI. A copy of the State's Notice of Privacy Practice is attached to this Agreement and incorporated herein.
- b. The State must notify the Business Associate of any changes in, or revocation of, permission by a person to use or disclose PHI, to the extent that such changes may affect the Business Associate's use or disclosure of PHI.
- c. The State must notify the Business Associate of any restriction to the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

- d. The State, except as may be expressly agreed to by the parties and stated in this Agreement, may not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the requirements of the HIPAA and HITECH Acts and the implementing regulations if done by the State.

8. Term and Termination

- a. The term of this Agreement shall be effective as of the effective date that the Business Associate begins delivery of its services and shall terminate when all of the PHI provided by the State to the Business Associate, or created or received by the Business Associate on behalf of the State, is destroyed or returned to the State, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this subsection.
- b. Upon the State's knowledge of a breach, as defined in § 164.402, by the Business Associate, the Department, as its sole discretion, must provide an opportunity for the Business Associate to:
 - (i) cure the breach; or
 - (ii) end the violation and terminate this Agreement if the Business Associate does not cure the breach; or
 - (iii) end the violation within the time specified by the Department; or
 - (iv) immediately terminate this Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible; or
 - (v) if neither termination nor cure are feasible, the State must report the violation to the Secretary.
- c. Upon the Business Associate's knowledge of a material breach by the State, the Business Associate must either:
 - (i) notify the State of such breach in reasonable detail, and provide an opportunity for the State to cure the breach or violation; or
 - (ii) if cure is not possible, the Business Associate may immediately terminate this Agreement; or
 - (iii) if neither termination nor cure is feasible, the Business Associate shall report the violation to the Secretary.
- d. The State may unilaterally terminate this Agreement with the Business Associate upon thirty (30) days written notice in the event:
 - (i) the Business Associate does not promptly enter into negotiations to amend this Agreement when requested by the State pursuant to the terms of this Agreement; or
 - (ii) the Business Associate does not enter into an amendment to this Agreement providing assurance regarding the safeguarding of PHI that the State, in its sole discretion, deems sufficient to satisfy the standards and requirements of the HIPAA and HITECH Acts and the implementing regulations.

9. Effect of Termination

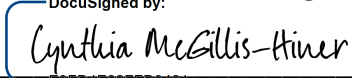
- a. Except as provided in this subsection, upon termination of this Agreement, for any reason, the Business Associate shall at the State's sole discretion return or destroy all PHI received from the State or created or received by Business Associate on behalf of the State. This Agreement shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of the PHI.
- b. In the event that the Business Associate determines that returning or destroying the PHI is infeasible, the Business Associate must provide to the State notification of the

conditions that make return or destruction infeasible. Upon written agreement by the State that return or destruction of PHI is infeasible, the Business Associate must extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI.

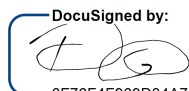
10. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Regulation or Security Regulation means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the State to comply with the requirements of the HIPAA and HITECH Acts and the implementing regulations.
- c. Survival. The respective rights and obligations of the Business Associate under this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Department to comply with the requirements of the HIPAA and HITECH Acts and the implementing regulations.

MONTANA DEPARTMENT OF CORRECTIONS

BY:  Date: 12/14/2022
Cynthia McGillis-Hiner, Bureau Chief

BUSINESS ASSOCIATE

BY:  Date: 12/14/2022
Ryan T. Rice, Principal & Practice Lead